

# THE VIRTUAL LEGAL MARKETPLACE

*Lawyers have been cautious about using social networking but are gradually embracing the use of social sites such as Facebook, LinkedIn and Twitter. Web 2.0 continues to challenge lawyers as they realize that opting out of this new system of connection may equal opting out of business*

By Marzena Czarnecka

“**O**ne evening there was a remarkable breakdown of the local telephone system. Anyone who picked up the phone could hear everyone else at once. Hundreds of voices – some sounding distant, some close by – hovered in the first social virtual space I had ever experienced. An instant society of children formed, brilliantly superior to that of the schoolyard ....”

Thus writes Jaron Lanier, the computer scientist-artist-entrepreneur who coined the term virtual reality in the 1980s, about the seminal childhood experience that inspired him to work towards developing a communication medium that would “subvert” the rules of the physical schoolyard – or brick and mortar workplace – and dangle the promise of “a virtual agora that brings out the best in people.”

Lanier’s first virtual reality experience, detailed in “A Childhood Between Realities,” an essay in John Brockman’s *Curious Minds: How a Child Becomes a Scientist* (Pantheon Books, 2004), recounts the telephone system breakdown. While adults panicked and railed against the telephone company, the children played with the possibilities. Small wonder, perhaps, that those children, Lanier included, went on to invent the web and continued to play with its possibilities, giving rise to its more and more complex incarnations, each one of which is generally characterized by improved, more sophisticated – simultaneously more intimate and more virtual – communication tools.

The web has challenged law firms from its inception, and

lawyers being who they are – and big law firms in particular being the institutions that they are – the tendency in the profession has been to worry about potential dangers of the medium first and jump on opportunities third ... or last.

In 1999, there were still law firms that didn’t have a website – or much of one – and lawyers who eschewed the conveniences of e-mail for the comparative security of the courier and the telephone.

Sometime between 1999 and 2009, law firms got it and today, the competitive practice of law without those tools is impossible, virtually and practically. But the web is ever-changing, and its 2.0 incarnation is challenging law firms again. The culprit this time: social networks and social media, as personified by Facebook, LinkedIn, Twitter and other ever-multiplying social sites. The reaction from the profession?

Cautious. But not dismissive.

“**L**awyers are way behind the curve, and that’s probably as it should be,” says Simon Fodden, professor emeritus with Osgoode Hall Law School and blogger extraordinaire. “They’re a very traditional conservative group by and large.” Plus, he adds, they don’t get much payoff from being early adopters. “It’s safer to be the second man on the moon – or in the third or fourth flight to the moon – than the first,” he quips. “I think it’s very sensible for law firms to be a little conservative with new tools and media.”

Best reason to delay: most of them don’t do law firms any good until their clients adopt them anyway.

## THE VIRTUAL LEGAL MARKETPLACE

Fodden doesn't practise what he preaches: he is an early adopter of many of the web's social tools. He embraced blogging long before it hit the mainstream, and four years ago, he took it to a new level in the legal market by pulling together other enthusiasts into *slaw.ca*, "a Canadian co-operative blog about any and all things legal."

The blog initially had a research and "library" bent – indeed, law firm librarians, frequently the leaders in communication and information technology adoption at law firms, remain key contributors and readers – but as it evolved, its constituency and reach broadened. Current core contributors include Ogilvy Renault LLP's Jeremy Gruschow, Hicks Morley Hamilton Stewart Storie LLP's Daniel Michaluk and McInnes Cooper's David T.S. Fraser, author of the Canadian Privacy Law Blog ([www.privacylawyer.ca/blog](http://www.privacylawyer.ca/blog)), as well as Heenan Blaikie LLP's Simon Chester, Alejandro Manevich and Evan VanDyk.

Other marquee law firms are represented by occasional contributors: Torys LLP by Elizabeth Ellis; Stikeman Elliott LLP by David Tournier and Xavier Beauchamp-Tremblay; Fasken Martineau DuMoulin LLP by Alex Cameron; and Bennett Jones LLP by Brenda Johnson. Lenczner Slaght Royce Smith Griffin LLP's Glenn Smith writes a column, as does Fulbright & Jaworski LLP's New York partner Robert Owen. You'll also find Carol Lynn Schafer from Winnipeg's Pitblado LLP here and Jeffrey Vicq from Vancouver's Clark Wilson LLP, as well as Aird & Berlis LLP's Angela Swan. Pitblado, Clark Wilson, Heenan Blaikie and Borden Ladner Gervais LLP (BLG) additionally all maintain firm guest blogs with *slaw*.

Not bad for a "labour of love" that sells nothing, advertises nothing, earns nothing and pays its contributors nothing.

But that's the MO of Web 2.0 and social media — or should be.

"The web developed as a gift culture, a gift economy," says Fodden. It's a marketplace unlike any other – at its best, the virtual Utopia Lanier envisioned during the telephone system crash of his 1970s childhood – a place where people give their expertise and time away for free.

Is it worth it?

**F**or James Hatton, a partner with Vancouver's Farris, Vaughan, Wills & Murphy LLP, the answer is an unequivocal yes.

Hatton has a personal profile on Facebook and a professional one on LinkedIn. He's had a blog on licensing ([www.jameshatton.com/public/](http://www.jameshatton.com/public/)) since 2003, and, more recently, he's started playing with Twitter. But his big "gift" to the web is an exhaustive list of links to publicly available pharmaceutical commercial licensing agreements, hosted on Delicious (<http://delicious.com>).

Delicious is a social bookmarking site where members share their favourite bookmarks. Hatton was an early adopter of its capabilities: it was a convenient way to organize the information he was gathering, and an easy way to share it with interested colleagues.

Inadvertently – but perhaps inevitably – the Delicious bookmarks have become his most powerful business development tool.

"When I go into a negotiation, I always arm myself with all publicly available agreements of the other side," Hatton explains. For the most part, these are publicly disclosed documents available via SEDAR, the Securities Exchange Commission and other sources, but finding them requires some digging. Hatton's done the digging — and in the spirit of Web 2.0, he doesn't think everyone else should replicate his effort. (A big change, notes Fodden, from the old-school model of closely guarded knowledge, within the legal profession and without.) Instead, people searching for specific pharmaceutical licensing agreements can – and do – go to <http://delicious.com/JamesHatton/agreement> and find what they need.

As they use the bookmarks Hatton has collected, they make them better. User suggestions help Hatton refine his sorting tags, identify new areas to track and occasionally bring to his attention to agreements he may have missed. That makes his job easier.

Then there's the profile and the pay-off. "I just got a call from a patent lawyer in Seattle, who called me after looking at the Delicious bookmarks, and told me he's just been talking about them with his boss," says Hatton. There's a file in the offing. "For me, that's gold."

Here's the tricky part, though. The pay-off's there chiefly because Hatton's "gift" to the Delicious community was, and is, a sincere one, with no strings attached. There's no "sell" on the site, no "hire me because I'm the expert in this field" sign.

"This culture demands that type of behaviour," says Jorge Colon, a Florida lawyer and founder of the Online Bar Association (beta site at [www.theonlinebar.com](http://www.theonlinebar.com)), a nascent global private membership organization of lawyers who practise online or want to learn how. "You're required to be generous and to participate, and the currency you're creating is built by how generous you are in supporting other people."

Colon is an active member of several social networks. Key among them is Keith Ferrazzi's online and IRL (that's web talk for "in real life") Greenlight Community. Ferrazzi is one of the leading gurus of social networking 21st century and Web 2.0 style. The theme that runs through Ferrazzi's proliferating books and articles (the bible is *Never Eat Alone: And Other Secrets to Success, One Relationship at a Time*; the newest one is

## THE VIRTUAL LEGAL MARKETPLACE

*Who's Got Your Back: The Breakthrough Program to Build Deep, Trusting Relationships That Create Success and Won't Let You Fail*) is deceptively simple.

Colon presents it as an acceleration of intimacy: "If you were somebody that I wanted to meet and have a business relationship with, how could I accelerate the intimacy, so that in a short period of time we feel connected?" he says. Used appropriately, social media foster those connections. "And then opportunities just happen," says Colon.

It works for individual lawyers. Hatton is full of stories of connections made via Delicious and LinkedIn contacts. Does it work for law firms as institutions?

It should. But, perhaps ironically given the greater resources institutions can bring to bear on the process, it's harder.

**S**arah Dale-Harris is an associate with the Toronto office of Davis LLP and a participant in a variety of social media. She blogs for the firm and as an individual — and she's acutely aware of the difference.

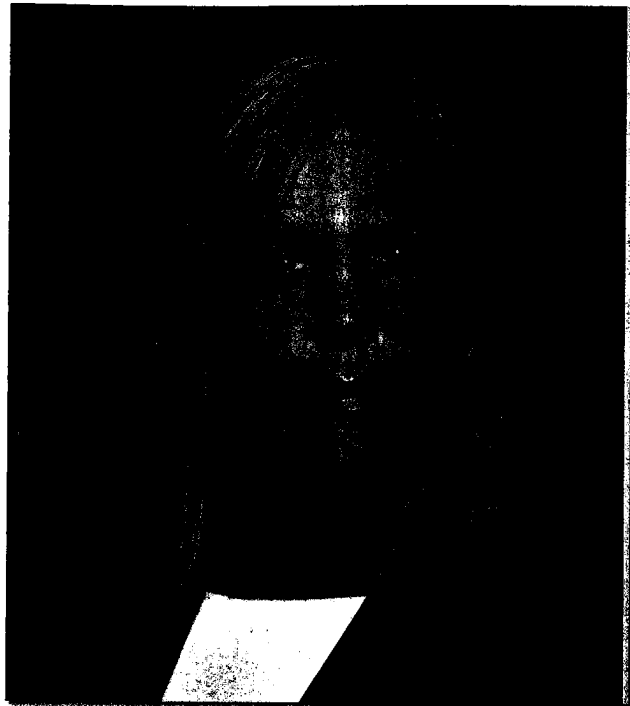
"To a certain extent, I'm always conscious of being a Davis partner and aware that what I do online reflects on the firm," she says. But when she's blogging as Sarah Dale-Harris *first*, she's able to be more personal, more opinionated, more — to borrow Colon and Ferrazzi's favourite web adjective — intimate. An individual blog allows "more chance to inject my own personality"; a firm blog is generally meant to take a "neutral position."

The inevitable slippery slope from neutral to boring — or redundant, as every competitor churns out a similar "neutral" blog on the similar issue — is an obvious danger. But the new tools mitigate it somewhat.

For one, the audience of most social media self-selects: they *want* to hear from the firm. They choose to flag its tweets and follow them to blogs or web pages. This self-selection may mean that the audience a firm ends up with isn't necessarily the one it wants to be targeting — but it's an interested audience.

The user statistics one can get about that audience should help a firm further refine and target it, says Simone Hughes, chief marketing officer and national director for business development with BLG. Its nascent Twitter account has about 200 "followers," about 57 per cent of whom *are* lawyers. Oddly enough, 24 are from Ecuador. No one at BLG is sure why, but it's one of the trends Hughes and her team are tracking as they try to figure out how to effectively use Twitter and other social media.

The final "kick in the butt" driver, incidentally, behind BLG's current social media strategy — developed over the last year and "prioritizing and ranking" most of the popular and some less so of the currently available channels — was the realization how much of an online presence the firm had that wasn't created,



Sarah Dale-Harris; Davis LLP

much less updated or monitored, by it. "There was so much misinformation out there, dead pages, things about us that were out of date or just wrong," says Hughes.

Getting that message out there — and maintaining it — requires a great deal of sweat equity. BLG's got two full-time staff on it right now; they could probably use more. But apart from the people power required, the financial investment required to make an impact on the web is actually pretty minimal.

That's had a profound influence on business development decision-making at law firms, says Stuart Wood, chief marketing officer at Torys LLP.

"The financial investment is low," Wood stresses, which means a law firm can test the waters without breaking the bank. "I like placing small bets on these new technologies and new ways of getting information out there," he continues. "You don't make a huge investment, but you get a chance to see who shows up, what the reaction is, see what clients get excited about, what lawyers get excited about."

**T**hat's the thinking behind Torys' new YouTube Channel ([www.youtube.com/torysmedia](http://www.youtube.com/torysmedia)). "We had the podcasts and videos on our website anyway," says Wood. Cost and effort of putting them on YouTube? Minimal. The pay-off? Still under evaluation at Torys. The online legal community has given the venture a thumbs-up.

Law is Cool ([www.lawiscool.com](http://www.lawiscool.com)), the law school blog and podcast from Canada, loves it. Writes founder Omar Ha-



Sameer Dhargalkar, Ogilvy Renault LLP

Redeye, "This is what I've been waiting for. ... This project shows that the firm understands that students want a human face to firms that often appear intimidating." (He adds that the venture proves that "social media and viral videos are no longer for small firms or solo practices" — if Torys is doing it, they've gone mainstream.)

Law librarian Connie Crosby, one of the Canadian law web's leading "info divas" (she's a *slaw.ca* contributor and author of an award-winning and widely followed blog, available at <http://conniecrosby.blogspot.com/>), is a fan too, flagging it as one of her favourite videos on her YouTube user page.

There are critics. Legal Post's Mitch Kowalski was underwhelmed: "... Torys doesn't understand video. It seems that no one at the firm actually watches YouTube."

But, as Wood sees it, if this project, or just about any other social media offering, is a flop, Torys can pull the plug on it much more quickly than it would have been likely to move to junk an unpopular but expensive print brochure.

"You don't feel obligated to stick with it if it doesn't work," he says. "If you try Twitter, and nobody shows up, you don't attract any followers, you can just shut it down." Whereas when you have thousands of hard copies of some materials that stink ... well, it takes a while for the vested parties to agree to write it off.

Not everyone in the legal industry is a cheerleader, of course. Adam Lepofsky, president of legal recruiter RainMaker Group, notes that as they work right now, social network tools are taboo in the recruitment world beyond the junior associate level.

"We've got to be very careful with them, because everything we do around partner recruitment is so confidential," he says. Most of the partners he works with would "sooner die" than let it be known on LinkedIn, much less Facebook, that they're open to job offers.

"We do it the old-fashioned way," says Lepofsky. "We talk a lot on the telephone." And the really old-school way: they meet in person. "Because it's all relationship-based, and you can't replace the personal meeting at these levels."

As a result, Lepofsky doesn't use social media for business development purposes. He sees their utility, however, for his colleagues who work with associates, and perhaps even partners in certain niche areas. He's skeptical — but he's not writing them off.

That's an important lesson. The lawyer who wrote off e-mail in 1999? Eating his words. But then, he's in good company. Fodden and *slaw.ca* wrote off Twitter when it first came out.

"We looked at it and said we don't think so," he admits. You can view the blog post to that effect in *slaw.ca*'s archives. Now, Fodden tweets regularly, announcing new *slaw* blog posts three to five times a day. Plus, he's just set up a Twitter feed that alerts followers whenever a new Supreme Court decision is released.

"It's important to be aware of what's happening as much as you can, and to not disdain it," he says.

Sameer Dhargalkar, director of business development at Ogilvy Renault LLP, agrees. He's "bullish" on many of the social networks and media gaining speed on the web and in the legal community (his biggest bet right now is on Twitter, although tweets have a lot of evolving to do still — according to a recent survey by Pear Analytics, 40.55 per cent of the traffic on Twitter is still "pointless babble"). He's less a fan of the suddenly proliferating "closed" communities like Legal OnRamp and Martindale-Hubbell Connected.

Unlike LinkedIn or the ubiquitous Facebook, closed networks limit membership based on some predefined criteria; in the case of Legal OnRamp ([www.legalonramp.com](http://www.legalonramp.com)) and Martindale-Hubbell Connected ([www.martindale.com/connected](http://www.martindale.com/connected)) and their ilk, to lawyers only. Dhargalkar sees the surface attraction (it seems that many lawyers like hanging out just with other lawyers), but as a true social networking and business development tool, he says, "closed networking communities have limited benefits." The obvious one: most of your clients can't find you there.

That's how Jeremy Grushcow of Ogilvy Renault in Toronto, who is a social network enthusiast, sees it too. "I've avoided those industry-specific sites to date," he says. "My sense is that lawyers are not that hard to find, and the primary value of social networking for me isn't about finding other lawyers."

## THE VIRTUAL LEGAL MARKETPLACE

Still, neither Grushcow nor Dhargalkar are writing these sites off, nor is the firm discouraging Ogilvy Renault lawyers from joining them at will. "We're monitoring them, and although I don't see the value right now, they, especially Legal OnRamp, could be interesting," Dhargalkar says. "But we don't impose social network preferences on students, associates, staff or partners."

That's not how Web 2.0 works.

"I hear from people at other firms, the talk that we have to harness this and get every one of our lawyers on LinkedIn, and create a Facebook page for our firm, and get all the lawyers to participate — it's never going to work that way," Dhargalkar says. "It's like when a couple of years ago everyone was clamouring about blogging, and trying to get all their lawyers to blog. Well, most lawyers just aren't good at blog-type writing. And if you get blogs ghostwritten, that's not genuine."

And Web 2.0 is all about sincerity. So what's a 700-lawyer law firm to do? "You have to let the passionate people lead," says Dhargalkar. "Others will follow." Or not — staying out of the game is an option too. For a while, anyway.

Standing in the way of those who are eager to play, however, is not an option. You can play with your Facebook account at Ogilvy Renault; ditto Torgs and BLG.

"We've progressed," says Hughes. "Years ago, we did block all this stuff." But when you want your lawyers to do business development Web 2.0 style, you've got to let them have access to the key sites, right?

Umm ... maybe. Eventually. A recent informal survey by Boston lawyer Doug Cornelius — published (where else?) on his blog (<http://dougcornelius.com>) — had 45 per cent of respondents indicting their law firms for blocking social networking sites. Like most tech-savvy lawyers, Cornelius is not a fan of the practice. He freely admits there are dangers, be they privacy concerns or time waste issues. But blockage is not the answer.

"You can just as easily access these sites from iPhone or BlackBerry as you can from a firm computer," Cornelius writes. "Blocking does not stop the bad behaviour that you are trying to prevent."

**D**avis's Sarah Dale-Harris and Justin Mooney agree. Ironically, Davis, which has been an early adopter of several of the social media as a firm, and which encourages its lawyers to blog, tweet and virtually network in other ways, blocks sites such as Facebook in the office. Dale-Harris and Mooney both use Facebook regularly (at work? Maybe. As Mooney points out, it's not that hard for a tech-savvy person to override the block. Or pop out the BlackBerry ...), and while Dale-Harris is of the "Facebook is personal, LinkedIn is professional" school (although you will find her in the "I'm a Lawyer But I'd Rather be a Pirate" community), for Mooney,

Facebook is *the* professional rolodex of choice.

"As your practice progresses, your personal and professional lives become intertwined," he says. "The practice of law is so much about relationships, anything you can do to cement relationships is a good thing, and Facebook is another way that facilitates that." He uses Facebook as a tool that helps "clients or new connections understand me on a more personal level." And vice-versa.

His advice to other lawyers on Facebook, though, is to keep it in perspective — and use it to, *inter alia*, arrange for regular face-to-face time with clients and prospects. "All of these things, they are business development tools — *tools*," Mooney stresses.

And tools that sometimes work in mysterious — at least indirect — ways. Grushcow delivers the example that for him, defines what social networks should be, for lawyers and for business people today.

"The value of my network is not as a directory, it's as something that has the ability to connect people who are in it," he says. A personal friend who's a contact on LinkedIn notices that one of Grushcow's connections is an executive at a company the friend is interested in. The friend requests an introduction. Grushcow sends an e-mail. "They get together for lunch, and now they're doing business together. That's a perfect example of what LinkedIn does for people."

**I**s Web 2.0, in its best aspects characterized by developing social networks, focus on dialogue, and a collaborative "gift" culture the agora virtual reality's father Jaron Lanier envisioned in the 1970s? Maybe. Lanier himself is optimistic, but cautious — Web 2.0 and the social networks it has enabled to date are just the beginning. "I believe that there is a new form of expression, as fundamental as language, that will come into being as we learn to make virtual worlds a means of interpersonal connection," he writes.

And while no one expects lawyers and law firms to lead the way, opting out from participating in these new systems of connection and communication may well equal opting out of business.

"If the real estate mantra is location, location, location, for business communication today the three most important words are web, web and web," says Hughes. "If you're not up on what the web and social media can do, you will be behind in business."

Fodden is sure law firms will figure it out. "The curve is accelerating," he says. "It took 20 years for lawyers to get used to e-mail, and 10 years to get used to Internet. Blogging took five years to go mainstream, and it will be perhaps two for Twitter."

And less for the next big thing.

Stay on your toes. ♣

---

*Marzena Czarna is a Calgary-based freelance writer.*